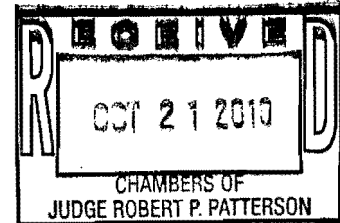


STORCH AMINI & MUNVES PC
A New York Professional Corporation



Bonnie A. Tucker
Member NY & NJ Bars

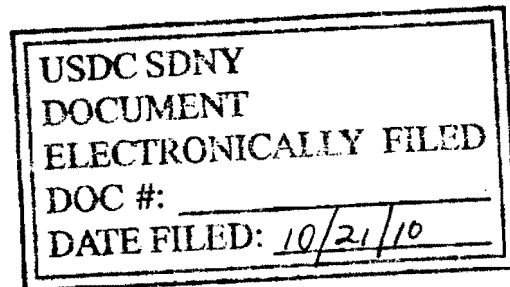
e-mail: btucker@samlegal.com
direct: 212.497.8236

MEMO ENDORSED

October 21, 2010

BY HAND

Hon. Robert P. Patterson, Jr.
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007



Re: David R. Kittay, Trustee v. Joseph Korff, 08 CV 7421(RPP)

Dear Judge Patterson:

We write concerning the "unavailability" of the Debtor, Douglas Palermo, at the trial in this matter. As Your Honor is aware, Defendant Joseph Korff ("Defendant"), with full knowledge of the unavailability of Mr. Palermo with whom he still communicates, has objected to the use of the prior trial and deposition testimony of Mr. Palermo at trial.¹ For the reasons set forth below, we hereby respectfully request that the Court order Mr. Palermo to appear at the trial in this matter, and that such order be delivered by the service of a subpoena, together with the Court's order, to Mr. Palermo's email address and the mail box that he has listed as his only address, together with a message delivered to his personal cellular telephone (or to him personally should he take our call) that an order has been entered directing him to appear at trial and that such order and a subpoena is being delivered in accordance therewith.

Due to Mr. Palermo's refusal to provide a residential address and his lack of a business address, Plaintiff has been unable to serve Mr. Palermo with a trial subpoena. The address which Mr. Palermo has provided as his residence and business address is 15 East Putnam Avenue, Suite 3090, Greenwich, Connecticut, a Mail Boxes Etc. location. See the relevant pages of the Deposition of Douglas E. Palermo taken on September 27, 2010 ("Palermo Tr.") annexed hereto as Exhibit A at pp. 4:12-16; 8:21-9:12.

Mr. Palermo appeared at the September 27, 2010 deposition concerning the judgment entered against him in the adversary proceeding captioned David R. Kittay v. Douglas Palermo. During such deposition, Mr. Palermo testified that he has not had a permanent address since June, 2009

¹ In contrast, in his response to Plaintiff's document requests, Defendant reserved the right to rely on the prior testimony of Mr. Palermo and other witnesses from the discharge proceeding against Mr. Palermo.

Hon. Robert P. Patterson, Jr.
October 21, 2010
Page 2

and that he sleeps at three different locations. See Ex. A at p. 4:12-24; 6:17-21. Mr. Palermo refused to provide any detail of the addresses or even their state. Id. at p. 6:17-7:7. As Mr. Palermo refuses to provide his address, Plaintiff is unable to ascertain if he resides or works within 100 miles of the courthouse.

Indeed, in a prior adversary proceeding against Mr. Palermo's ex-wife, Plaintiff hired a process server and investigator to investigate and serve Mr. Palermo. The investigator confirmed that the address 15 East Putnam Avenue is a Mail Boxes Etc. A copy of the process server's and investigator's affidavits are annexed hereto as Exhibit B.

Accordingly, the Court may direct alternate service of a subpoena under Federal Rule of Civil Procedure 45. "The language of Rule 45 does not explicitly demand personal service of a subpoena, but instead only requires that a copy be "deliver[ed]" to the person whose attendance or production is sought. Such language "neither requires in-hand service nor prohibits alternative means of service." Cordius Trust v. Kummerfeld, 2000 WL 10268, at * 2 (S.D.N.Y. Jan. 3, 2000) (citing King v. Crown Plastering Corp., 170 F.R.D. 355, 356 (E.D.N.Y. 1997) (alteration in original) (permitting alternate service of a subpoena).

Moreover, under the Bankruptcy Code, Mr. Palermo, as the Debtor, shall "if a trustee is serving in the case . . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3). The Trustee's duties include "the collect[ion] and reduc[tion] to money the property of the estate for which trustee serves" 11 U.S.C. 704(a)(1). Mr. Palermo is required to cooperate with the Trustee in the collection of money for the estate in this proceeding. See In re Blurton, 334 B.R. 602, 608 (Bankr. W.D. Tenn. 2005) (noting the debtor's "statutory obligation to cooperate with the trustee and the trustee's counsel in prosecution of the adversary proceedings").

Given that he has no counsel of record, on October 20, 2010 at approximately 4:18 p.m., the undersigned called Mr. Palermo's cellular phone and left a message regarding the upcoming trial. Mr. Palermo returned my call on October 21, 2010 at approximately 9:06 a.m. leaving a voicemail simply stating that he called. The undersigned called Mr. Palermo back at approximately 9:28 a.m. and left another message regarding the upcoming trial.

Accordingly, it is respectfully requested that this Court issue an order permitting service of the trial subpoena to which any such order would also be attached upon Mr. Palermo via: (1) electronic mail at the email address he has previously provided to us (depnorfolk@att.blackberry.net); and (2) federal express to his Mail Boxes Etc. address. In addition, we would leave a telephone message on his cellular number (917-863-5151) identifying the undersigned and stating that "please be advised that a court order has been entered directing your presence at the trial in this matter on October 25, 2010 at 9:30 a.m. before the Honorable Robert P. Patterson, Jr., in Courtroom 24A at 500 Pearl Street, New York, New

Application Granted

The Court hereby issues an order permitting service of a trial subpoena pursuant to which service on Mr. Douglas Palermo would be effected by electronic mail, federal express and telephone message in the manner set forth above.

So ordered

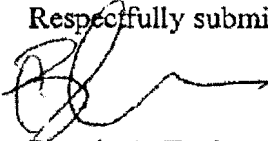
See attached typewritten
Memo Endorsement

*Robert P. Patterson, Jr. U.S.D.P.
October 21, 2010 at 2:15 PM*

Hon. Robert P. Patterson, Jr.
October 21, 2010
Page 2

York, and a subpoena has been federal expressed to your Mail Boxes Etc. address and sent to your email address in accordance with such order."

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Bonnie A. Tucker", written over the typed name.

Bonnie A. Tucker

Enclosures

cc: Carl Oberdier, Esq. (via email)
Douglas Palermo (via email)
Andrea Marcus, Esq. (via email)
Joseph Korff, at the request of Mr. Oberdier (via email)

Case: Kittay v. Korff
Index No.: 08 Civ. 7421 (RPP)

MEMO ENDORSEMENTS READ AS FOLLOWS:

Application granted.

This Court hereby issues an order permitting service of a trial subpoena pursuant to which service on Mr. Douglas Palermo would be effected by electronic mail, federal express and telephone message in the manner set forth above.

So Ordered.

Robert P. Patterson, Jr., U.S.D.J., 10/21/10 at 2:15 pm

EXHIBIT A

Page 1

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

-----X
4 In Re: :
5 DOUGLAS PALERMO, :
6 Debtor. :

-----X Case No. 05B25081 (ASH)

7 DAVID R. KITTAY, TRUSTEE, :
8 Plaintiff, :
9 - against - :
10 DOUGLAS PALERMO, :
11 Defendants. :

-----X

12
13 DEPOSITION OF DOUGLAS E. PALERMO
14 New York, New York
15 September 27, 2010
16
17
18
19
20
21
22

23 Reported by:
24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR
25 JOB NO. 33378

1 Palermo

2 DOUGLAS E. PALERMO, called as a

3 witness, having been duly sworn by a Notary

4 Public, was examined and testified as

5 follows:

6 EXAMINATION BY

7 MS. TUCKER:

8 Q. Please state your name.

9 A. Douglas Palermo.

10 Q. Do you have a middle initial?

11 A. E.

12 Q. And your current address?

13 A. It's a mailbox at the moment. There's
14 no permanent address at the moment.

15 15 East Putnam, P-U-T-N-A-M, Avenue,
16 Suite 3090, Greenwich, Connecticut, 06830.

17 Q. Do you have a telephone number?

18 A. 917-863-5151.

19 Q. When was the last time you had a
20 permanent address?

21 A. A year ago June.

22 Q. And what was that address at that
23 time?

24 A. 14 Grove Lane, Greenwich, Connecticut.

25 Q. Let me just back up and give you the

1 Palermo

2 (Palermo Exhibit 1, Judgment, marked
3 for identification, as of this date.)

4 Q. That's Exhibit 1. As you know, that's
5 the judgment we were referring to earlier.

6 A. Yes.

7 Q. How did you get here today?

8 A. I took the subway.

9 Q. Where did you take the subway from?

10 A. 77th Street.

11 Q. Where did you spend the night last
12 night?

13 A. A friend's apartment.

14 Q. How many nights do you spend at this
15 friend's apartment?

16 A. Just last night.

17 Q. You mentioned earlier you don't have a
18 permanent address. Where do you usually spend
19 the night?

20 A. Well, I've been three different places
21 in the last year.

22 Q. The address of the first place?

23 A. No. These are friends of mine and I'm
24 not going to expose them to this. They have
25 nothing to do with my business. They're not

1 Palermo

2 holding assets, cash, and I have no contractual
3 obligations with any of them.

4 Q. What state are they in?

5 A. I'm not going to say that. If you
6 want to go before Judge Drain, I'll be glad to
7 do that.

8 Q. We'll mark it for a ruling.

9 Have you ever resided at 1032 Jacks
10 Shop Road in Rochelle, Virginia?

11 A. Yes.

12 Q. When was the last time you lived
13 there?

14 A. Two years ago.

15 Q. And how long did you reside there?

16 A. About a year.

17 Q. So that would be from about 2007 to
18 2008?

19 A. That's correct.

20 Q. Do you currently have a driver's
21 license?

22 A. Yes.

23 Q. What state is that in?

24 A. Virginia.

25 Q. Please state your date of birth.

Page 8

Palermo

A. 1/3/45.

Q. And the place of birth?

A. Norfolk, Virginia.

Q. What's the highest educational degree
that you received?

A. Four years of college.

Q. And when was that?

A. 1968.

Q. And what was the degree in?

A. Pardon me?

Q. What did you receive your degree in?

A. I didn't receive a degree. I left to
go into the service right before the end.

Q. What college was that?

A. University of Virginia.

Q. Are you currently married?

A. No.

Q. Do you hold any professional licenses?

A. No.

Q. Where you are currently employed?

A. Self-employed.

Q. What's the name of the company?

A. It's not a company. It's me.

Q. Do you do business as a particular

1 Palermo

2 entity?

3 A. Norfolk Financial. N-O-R-F-O-L-K
4 Financial.

5 Q. Is that an LLC? An Inc.?

6 A. Yes, it is. It's registered in
7 Delaware.

8 Q. LLC?

9 A. Yes.

10 Q. And where is that company's address?

11 A. The Greenwich address I gave you
12 before.

13 Q. What sort of work does Norfolk
14 Financial, LLC engage in?

15 A. Advisory work for financings, real
16 estate financings.

17 Q. And when was the last time Norfolk
18 Financial performed advisory work for real
19 estate financing?

20 A. Well, it also does a little private
21 equity.

22 Last December.

23 Q. So that's December of 2009?

24 A. That's correct.

25 Q. And which project was that?

Palermo

MS. TUCKER: All right. I'm going to
end my portion today but leave the record
open for the portions of which we asked for
a ruling and for Mr. Palermo to provide the
information as to the commissions.

THE WITNESS: Okay.

(Time Noted: 10:41 A.M.)

ooo

DOUGLAS E. PALERMO

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CERTIFICATE

STATE OF NEW YORK)

: SS

COUNTY OF NEW YORK)

I, Kathy S. Klepfer, a Registered
Merit Reporter and Notary Public within and
for the State of New York, do hereby
certify:

That DOUGLAS E. PALERMO, the witness
whose deposition is herein before set forth,
was duly sworn by me and that such
deposition is a true record of the testimony
given by such witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage and that I am in no way
interested in the outcome of this matter.

I further certify that neither the
deponent nor a party requested a review of
the transcript pursuant to Federal Rule of
Civil Procedure 30(e) before the deposition
was completed.

In witness whereof, I have hereunto
set my hand this 7th day of October 2010.


Kathy S. Klepfer

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x Case No. 05-25081 (RDD)
In re Douglas E. Palermo,

Debtor.

David R. Kittay, Trustee,

Plaintiff,

v.

AFFIDAVIT OF
ATTEMPTED SERVICE

Marilyn Hutchings,

Defendant.

-----x
STATE OF NEW YORK)

COUNTY OF NEW YORK)
s.s.:)

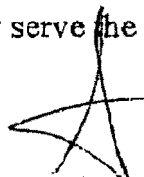
I, PETER FELDMAN, being duly sworn, depose and say, I am not a party in this action and am over the age of eighteen years.

I am a process server with Serving by Irving, Inc. bearing license number 797824. I was assigned to effectuate service of a Subpoena in an Adversary Proceeding upon Douglas E. Palermo for the law firm of Storch Amini & Munves PC.

On January 11, 2010 at approximately 4:00 p.m., I attempted service at the given address 15 East Putnam Avenue, Suite 1390, Greenwich, CT 06830. At the location is Mail Boxes Etc. The clerk I spoke with would not confirm nor deny whether Douglas E. Palermo has a private mail box here.

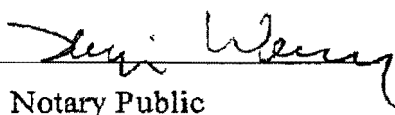
On January 13, 2010, I attempted service at the given address 14 Grove Lane, Greenwich, CT 06831. Douglas E. Palermo is a previous renter at this address as per the current female renter I spoke with.

After due diligence I was unable to personally serve the named documents upon Douglas E. Palermo at the given addresses.



PETER FELDMAN
License No. 797824

Sworn to before me this
26th day of January, 2010


Notary Public

HE YI WENG
Notary Public, State of New York
No. 01WE6178606
Qualified in Kings County
Commission Expires Dec. 03, 2011

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x Case No. 05-25081 (RDD)

In re Douglas E. Palermo,

Debtor.

David R. Kittay, Trustee,

Plaintiff,

v.

AFFIDAVIT OF
INVESTIGATOR

Marilyn Hutchings,

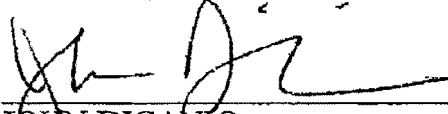
Defendant.

-----x
STATE OF NEW YORK)
s.s.:)
COUNTY OF NEW YORK)

I, JOHN DICANIO, being duly sworn depose and state that I am a private investigator working under Serving by Irving, Inc. A New York State company licensed by the New York State Department of State with License # 11000079635. I am not a party in this action and I am over the age of eighteen years.

I performed database searches on Douglas E. Palermo and 1032 Jacks Shop Rd., Rochelle, VA 22738 came up as the most current address for Mr. Palermo.

In checking with the United States Post Office, mail addressed to Douglas E. Palermo at 14 Grove Lane, Greenwich, CT 06831 is forwarded to his private PO Box.


JOHN DICANIO
NYS Company Lic# 11000079635

Sworn to before me this
26th day of January, 2010


Notary Public

HE YI WENG
Notary Public, State of New York
No. 01 WE6178606
Qualified in Kings County
Commission Expires Dec. 03, 2011